RECEIVED
JUL 14 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Steven Charles Poletti, Petitioner, vs. Charleston County Assessor, Respondent.	)))))))))))	Docket No. 22-ALJ-17-0027-CC **ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF RESPONDENT**

APPEARANCES: For Petitioners: Nicholas C.C. Stewart, Esquire
Giampiero Diminich, Esquire
Felix Chisolm Pelzer, Jr., Esquire

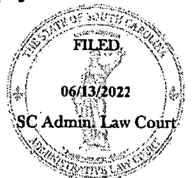
For Respondent: Bernard E. Ferrara, Jr., Esquire
Kevin Michael DeAntonio, Esquire

STATEMENT OF THE CASE

This matter comes before the Administrative Law Court (the ALC or the Court) following a request for a contested case hearing pursuant to section 12-60-2540 of the South Carolina Code (2014) and section 1-23-600(B) of the South Carolina Code (Supp. 2021). Steven Charles Poletti (Petitioner or Taxpayer) challenges Respondent's denial of a 4% legal residence exemption for property located at 1767 Atlantic Ave., Sullivan's Island, South Carolina 29482 (the 1767 Parcel) for the relevant tax year. Respondent Charleston County Assessor (Respondent or the Assessor) denied the exemption because Petitioner was already receiving the 4% exemption on an adjacent property located at 1771 Atlantic Ave., Sullivan's Island, South Carolina 29482 (the 1771 Parcel). The Charleston County Board of Assessment Appeals (the Board) affirmed the Assessor's action.

Petitioner filed a request for a contested case hearing dated January 20, 2022. The Assessor filed a motion for judgment on the pleadings [1] or alternatively, for summary judgment. Petitioner

[1] Rule 12(c), SCRCP, which authorizes a motion for judgment on the pleadings, is not directly applicable in the ALC. Instead, the rules of the ALC provide that the South Carolina Rules of Civil Procedure "may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules." SCALC Rule 68. The Court declines to apply



filed a cross motion for summary judgment on May 18, 2022. A hearing on the motions was held on May 26, 2022. At the hearing, the parties stipulated to certain facts, which were entered in the record.

STIPULATIONS OF FACT

At the May 26, 2022 hearing, the parties entered the following written stipulations of fact into the record:

1. This case involves two contiguous parcels of real property located at 1771 Atlantic Avenue and 1767 Atlantic Avenue on Sullivan's Island, South Carolina.
2. The property at 1771 Atlantic Avenue is identified by Tax Map Number 523-12-00-032, and is owned by Manda Moore Poletti Qualified Personal Residence Trust.
3. The property at 1767 Atlantic Avenue is identified by Tax Map Number 523-12-00-031, and is owned by Petitioner.
4. The properties at 1767 Atlantic Avenue and 1771 Atlantic Avenue collectively comprise less than five acres.
5. The property at 1771 Atlantic Avenue is presently receiving the legal residence classification. The property at 1767 Atlantic Avenue is not presently receiving the legal residence classification.
6. In January 2021, Petitioner requested that the property at 1767 Atlantic Avenue receive the legal residence classification.
7. The Assessor denied Petitioner's request. The [Board] concurred with the Assessor. This contested case followed.
8. The issue in this contested case is whether Petitioner's property at 1767 Atlantic Avenue is eligible to receive the legal residence classification, while Petitioner's property at 1771 Atlantic Avenue is also receiving the legal residence classification.

Additionally, the parties verbally stipulated on the record at the hearing that the 1771 Parcel is owned by Manda Moore Poletti Qualified Personal Residence Trust, of which Petitioner is the primary beneficiary, and that the 1767 Parcel is owned by Petitioner personally.

Rule 12(c), SCRCP in this case. As explained in more detail below, the Court grants the Assessor's motion for summary judgment.

CONCLUSIONS OF LAW

The Court has jurisdiction over this matter pursuant to sections 1-23-600(B) and 12-60-2540 of the South Carolina Code. While this matter reaches the Court somewhat in the posture of an appeal, the proceeding before the Court is a de novo contested case hearing. *See Smith v. Newberry Cnty. Assessor*, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) ("When a tax assessment case reaches the AL[C] in this posture [, upon appeal from a county board decision], the proceeding in front of the AL[C] is a *de novo* hearing."); *see also Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[When] a case involving a property tax assessment reaches the AL[C] in the posture of an appeal, the AL[C] is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the AL[C] is in the nature of a *de novo* hearing.").

The applicable standard of proof in this contested case hearing is a preponderance of the evidence. *See Anonymous v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 378, 496 S.E.2d 17, 20 (1998); *see also DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 78, 804 S.E.2d 633, 643 (Ct. App. 2017) ("The standard of proof in an administrative hearing of a contested case is by a preponderance of the evidence."). In a contested case hearing before the ALC, the party contesting the decision of the Board has the burden of proof. *See Cloyd v. Mabry*, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct. App. 1988) ("A taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect."); *see also* S.C. Code Ann. § 12-43-220(c)(2)(iv) (Supp. 2021) ("[T]he burden of proof for eligibility for the four percent [residential] assessment ratio is on the owner-occupant . . . .").[2]

SCALC Rule 68 provides this Court may, at its discretion, apply the South Carolina Rules of Civil Procedure in contested case proceedings when no ALC rule applies. This Court has determined that application of Rule 56(c), SCRCP, is proper in this case. Rule 56(c) states summary judgment is properly granted when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of

[2] The Court notes section 12-43-220 has been amended several times over the recent past. However, because the specific portions of this section that the Court analyzes have not changed during the applicable period, the Court cites the current version of the Code for simplicity.

law." "In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party." *Byers v. Westinghouse Electr. Corp.*, 310 S.C. 5, 7, 425 S.E.2d 23, 24 (1992). "[I]n cases applying the preponderance of evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). However, "when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001).

Here, Taxpayer argues that because the 1767 Parcel is within five contiguous acres of his primary residence (the 1771 Parcel), he is entitled to the 4% residence exemption for the 1767 Parcel and the dwelling located thereon. Taxpayer rests this argument both on the provisions of section 12-43-220(c) and on Article X, Section 1(3) of the South Carolina Constitution. In contrast, the Assessor asserts that Petitioner's application for the 4% exemption on the 1767 Parcel is properly denied because no provision of the South Carolina Code or of the South Carolina Constitution permits a taxpayer to obtain the 4% exemption on more than one residence. These arguments are addressed below.

I. Section 12-43-220(c) Does Not Authorize the Exemption for the 1767 Parcel.

Initially, the Court notes that claimants who have been denied the 4% exemption for property tax for a legal residence face certain obstacles. Subsection 12-43-220(c)(2)(iv) provides the burden of proof with respect to eligibility for the 4% exemption rests on the owner-occupant. South Carolina courts have also consistently held that statues granting tax exemptions, such as the statute in question here, must be narrowly construed. *Se-Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981). In *Southeastern-Kusan*, our supreme court explained the following:

> As a general rule, tax exemption statutes are strictly construed against the taxpayer. This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. It does not mean that we will search for an interpretation in the [tax collector's] favor where the plain and unambiguous language leaves no room for

> construction. Only when the literal application of a statute produces an absurd result will we consider a different meaning.

Id. at 489-90, 280 S.E.2d at 58 (internal citations omitted). The Court addresses the relevant statutory provisions below with these standards in mind.

Section 12-43-220 of the South Carolina Code (2014 & Supp. 2021) is entitled "Classifications shall be equal and uniform; particular classifications and assessment ratios; procedures for claiming certain classifications; roll-back taxes." It provides in pertinent part that:

> The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

§ 12-43-220(c)(1).

Taxpayer concedes that the 1771 Parcel is his legal residence but argues the application of the exemption extends to up to five contiguous acres surrounding the residence even when the acreage crosses the property line to include a separate, adjacent tract of land—here, the 1767 Parcel. He further argues that not only should the contiguous acres on the adjacent tract receive the exemption, but so should the dwelling on that tract. According to Taxpayer, the dwelling on the 1767 Parcel is located on the same "property"—as Taxpayer construes that term—as his legal residence and is occupied by Taxpayer's immediate family members.

The Court concludes the language of section 12-43-220 does not permit such a broad construction. Instead, the Court finds section 12-43-220 contemplates a tax rate of 4% on only a single tract or parcel of land for a number of reasons, including the following:

1. Section 12-43-220 provides that additional dwellings may receive a 4% rate if they are located on the "same property" as the legal residence and not more than five acres contiguous thereto. § 12-43-220(c)(1). The statute's use of the phrase "the same property" undercuts Taxpayer's argument that the property afforded the 4% tax rate can include more than one tract or parcel of land.
2. Section 12-43-220(c)(2)(i) provides that "[t]o qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled *at that address* for some

period during the applicable tax year." § 12-43-220(c)(2)(i) (emphasis added). The Court is required to include this phrase in its analysis of the meaning of section 12-43-220(c)(1). *See S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) ("[S]tatute[s] must be read as a whole and sections which are part of the same general statutory law must be construed together and each given one effect."). Subsection 12-43-220(c)(2)(i)'s use of the phrase "at that address" strongly suggests that a legal residence is limited to one address. It is undisputed that the two parcels at issue here have distinct addresses and tax map numbers.

3. Similarly, section 12-43-220(c)(2)(iv) provides that the owner-occupant must provide certain information to the Assessor when applying for a four percent assessment ratio, including "copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant and registered *at the same address of the four percent domicile*." *Id.* (emphasis added). The italicized language is yet another instance in which the statute indicates that the four percent ratio applies to the "address" at which the applicant is domiciled. Again, the two parcels at issue here have distinct addresses and tax map numbers.
4. The key terms in section 12-43-220(c) are singular rather than plural. Specifically, the terms "residence" and "legal residence" are used solely in the singular.[3]
5. Finally, the term "legal residence" is a defined term. It means "*the* permanent home or dwelling *place* owned by a person and occupied by the owner thereof and where he or she

[3] Citing section 12-37-10 of the South Carolina Code (2014), Taxpayer argues the term "property" should be read to include the plural "properties." Section 12-37-10 defines the term "real property" as "not only land, city, town and village lots but also all structures and other things contained or annexed or attached thereto which pass to the vendee by the conveyance of the land or lot." Taxpayer argues that because this definition refers to lots and structures in the plural sense, references to property in section 12-43-220 should also be read in the plural sense. This argument falls short. Section 12-37-10 is itself ambiguous with respect to plurality, using the terms "lots" and "structures" in the same sentence as "land or lot," which are singular terms. Moreover, while the term "real property" appears in certain portions of section 12-43-220, the phrase at issue here is not "real property" but "[t]he legal residence." The Court does not believe a defined statutory term should be employed when the statute does not use the defined term, especially when, as here, the term "legal residence" is itself a defined term in the regulations. *See Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009) ("[When a] statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.").

is *domiciled*." S.C. Code. Ann. Regs. § 117-1800.1(2) (2012) (emphases added). This definition, too, is phrased in the singular rather than the plural, but more importantly, this definition requires a legal residence be the location at which the owner is domiciled. It is well-settled doctrine that an individual can have legal domicile in only one dwelling. Indeed, an individual can maintain any number of residences, but only one of those residences can be that individual's domicile. The South Carolina Supreme Court recognized this "elementary proposition" in 1975, holding that "[a] person may have more than one residence, but cannot have more than one domicile or be a citizen of more than one state at the same moment." *Ravenel v. Dekle*, 265 S.C. 364, 379, 218 S.E.2d 521, 528 (1975). The requirement in section 12-43-220(c) that the claimed legal residence be the owner's domicile therefore limits the 4% assessment for an owner-occupied dwelling to a single dwelling.

Taxpayer argues that reading section 12-43-220 to refer to a single tract or parcel produces absurd results. For example, Taxpayer asserts that construing the statute in this manner necessarily means that the only time a taxpayer would be entitled to the 4% tax rate on an additional dwelling would be situations in which the owner's children, spouse, or parents live full-time in the additional dwelling rent-free, which Taxpayer further asserts would cause an unnecessary intrusion into a family's domestic affairs, possibly violating a constitutional right to privacy. Taxpayer contends families would have to disclose private and personal details of the interworking of their home lives to satisfy the burden the Assessor asserts. Taxpayer posits that an owner/taxpayer would be in jeopardy of losing the preferred tax rate if, for example, a family member chooses to sleep in a different structure for medical or personal reasons.

This argument and others made by Taxpayer focus on the meaning of the term "occupied" as used in the statute rather than the meaning of the term "legal residence." Because the Court concludes that Taxpayer cannot claim the preferred tax rate on a parcel which is separate and distinct from the tract on which the legal residence is located, the Court need not reach Taxpayer's arguments regarding the meaning of the term "occupied." *Cf. Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

These arguments relate solely to taxation of the dwelling located on property adjacent to a legal dwelling and therefore, are outside the scope of the section 12-43-220(c) exemption.[4]

II. Article X of the South Carolina Constitution Does Not Provide a Broader Exemption than the Exemption Authorized by Statute.

Taxpayer argues the Assessor's construction of section 12-43-220 conflicts with Article X of the South Carolina Constitution, which states that "[t]he legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of such property." S.C. Const. art. X, § 1(3). Taxpayer asserts this language provides a blanket 4% tax rate for the legal residence and five acres contiguous to the legal residence, whether or not those five acres include a separate tract or parcel. Taxpayer states that the Assessor is using section 12-43-220 to take away or eliminate rights guaranteed under the South Carolina Constitution.[5]

The Court cannot accept this argument. Instead, the Court construes Article X, Section 1(3) of the South Carolina Constitution in a manner similar to its construction of section 12-43-220. It is not appropriate to construe Article X, Section 1(3) as a broad grant of favored tax status. Rather, it is well-settled that strict construction of constitutional and statutory provisions that grant exemptions or deductions from taxation is required. *Charleston Cnty. Aviation Auth. v. Wasson*, 277 S.C. 480, 485, 289 S.E.2d 416, 419 (1982). "Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of taxpayer claiming the exemption." *Id.* (quoting *York Cnty. Fair Ass'n v. S.C. Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967)).

---

[4] Taxpayer additionally argues that the Assessor's construction of the statute would encourage property owners to tear down additional structures at the legal residence or to somehow connect two separate structures at the legal residence to receive favorable tax treatment. However, this situation is not presented here, as the separate structure at issue is not located on the same tract as the legal residence but is located on the adjacent property. *Cf. Wallace v. City of York*, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981) ("The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation.").

[5] To the extent that Taxpayer argues section 12-43-220 is unconstitutional, the Court notes it is without power to determine the constitutionality of a statute. *See Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 39 (2011) ("It is well settled in this State that ALCs, as part of the executive branch, are without power to pass on the constitutional validity of a statute or regulation.").

In sum, the text of Article X, Section 1(3) does not support Taxpayer's argument. This section is a description of a classification of property in which a tax assessment must be equal and uniform. S.C. Const. art. X, § 1(3) ("The assessment of all property shall be equal and uniform in the following classifications: . . . (3) The legal residence and not more than five acres contiguous thereto . . . ."). The words used in the section are singular rather than plural. To wit: "*The* legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of *such property*." *Id.* (emphases added).[6]

Moreover, the Court concludes the words "not more than five acres contiguous thereto" are intended to be words of limitation. Instead of requiring that a taxpayer always receive a 4% tax rate of five acres surrounding the legal residence, this provision contemplates a taxpayer might receive the preferred rate on something less than five acres. Taxpayer conceded at the hearing that if a property owner lived on a single 10-acre parcel, the property owner would receive preferred tax treatment on the residence and five acres immediately surrounding the residence but not on the remaining acres of the same tract. Article X, Section 1(3) accordingly serves as a limit on what property may be afforded favored tax treatment. It would be incongruous to construe a constitutional provision which was intended to limit access to preferred tax treatment as broadly extending such access to multiple parcels or tracts with separate addresses and tax map numbers.

Finally, to the extent the Article X, Section 1(3) can be construed as ambiguous, the Court recognizes "that contemporary legislative interpretation of an ambiguous constitutional provisions, though not binding upon the courts, is entitled to great respect." *Johnson v. Thomason*, 236 S.C. 135, 140, 113 S.E.2d 417, 419 (1960).

ORDER

For the reasons set forth above, the Court **DENIES** Petitioner's motion for summary judgment and **GRANTS** the Assessor's motion for summary judgment. The Court concludes Petitioner is not entitled to the 4% exemption on the 1767 Parcel. This order fully disposes of this matter.

---

[6] Taxpayer's argument that plural aspects of the definition of "real property" should be read into the language of section 12-43-220 would have no application to a provision of the South Carolina Constitution. *See Ravenel*, 265 S.C. at 376, 218 S.E.2d at 527 ("Constitutions generally are most carefully prepared[,] and the courts are bound to presume that the framers had some purpose in inserting every clause and every word contained in the document . . . .").

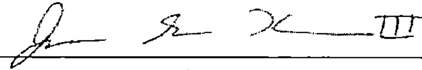
AND IT IS SO ORDERED.

Robert L. Reibold
Administrative Law Judge

June 13, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



James Smith Harrison, III
Judicial Law Clerk

June 13, 2022
Columbia, South Carolina